

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA, : 20CR115 (ENV)  
Plaintiff, :  
-against- : United States Courthouse  
RAYMOND KOHUT, : Brooklyn, New York  
Defendant. : Tuesday, April 6, 2021  
: 11:00 a.m.  
:

- - - - - X

TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING  
BEFORE THE HONORABLE ERIC N. VITALIANO  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Government: MARK LESKO, ESQ.  
Acting United States Attorney  
Eastern District of New York  
271 Cadman Plaza East  
Brooklyn, New York 11201  
BY: MARK BINI, ESQ.  
ANN BRICKLEY, ESQ.  
DEREK ETTINGER, ESQ.  
JON ROBELL, ESQ.  
ALEJANDRA ARIAS, ESQ.  
Assistant United States Attorneys

For the Defendant: FRIDMAN FELS & SOTO, PLLC  
2525 Ponce de Leon Blvd, Ste 750  
Coral Gables, FL 33134  
BY: ADAM SETH FELS, ESQ.  
ANEL VIAMONTES, ESQ.  
ALEJANDRO SOTO, ESQ.

Court Reporter: SOPHIE NOLAN  
225 Cadman Plaza East/Brooklyn, NY 11201  
NolanEDNY@aol.com

*Proceedings recorded by mechanical stenography, transcript  
produced by Computer-Aided Transcription*

Proceedings

2

1 (Via videoconference.)

2 (The Hon. Eric N. Vitaliano, presiding.)

3 (Defendant present.)

4 THE COURTROOM DEPUTY: The Court is now open. The  
5 Honorable Eric N. Vitaliano presiding. The case on the  
6 calendar is *USA versus Raymond Kohut*, 21-CR-115 on for a  
7 guilty plea.

8 Please note that persons granted remote access to  
9 proceedings are reminded of the general prohibition against  
10 photographing, recording and rebroadcasting of court  
11 proceedings. Violation of these prohibitions may result in  
12 sanctions including removal of court-issued media credentials,  
13 restricted entry to future hearings, denial of entry to future  
14 hearings or any other sanctions deemed necessary by the Court.

15 Will the court reporter please note her appearance  
16 for the record.

17 THE REPORTER: Sophie Nolan.

18 MR. BINI: Mark Bini, Ann Brickley, Derrick,  
19 Ettinger, Jon Robell, Alejandra Arias and Adam Schwartz for  
20 the United States.

21 THE COURT: Good morning Mr. Bini. Did you bring  
22 the whole team?

23 MR. BINI: I brought the whole team.

24 THE COURTROOM DEPUTY: Will counsel for the  
25 defendant please note their appearance?

Proceedings

3

1 MR. FELS: Good morning, Your Honor. This is Adam  
2 Fels appearing on behalf of Raymond Kohut. With me on the  
3 call is my associate, Anel Viamontes and Alejandro Soto.

4 THE COURT: Good morning. You are coming to us from  
5 Florida or are you in New York?

6 MR. FELS: I am coming to you from Florida.

7 THE COURTROOM DEPUTY: Would the defendant note his  
8 appearance by stating his name on the record.

9 THE DEFENDANT: Raymond Kohut.

10 THE COURT: Good morning to you, Mr. Kohut.

11 THE DEFENDANT: Good morning, Judge.

12 THE COURT: Where are you located this morning?

13 THE DEFENDANT: In Long Island, sir.

14 THE COURTROOM DEPUTY: Counsel for both sides are  
15 present, including defendant.

16 THE COURT: Well, good morning all. I don't know if  
17 this is exactly what the CARES Act had in mind but we managed  
18 to jerry the system. I know my brother Sterling Johnson would  
19 be very pleased that I am in a park-like setting. I am  
20 outside and you will hear outside noises. So no one should be  
21 shocked or surprised by that. It could include dogs, geese,  
22 babies and all sorts of other things that may be in the  
23 neighborhood. But we are, and with the grace of God we are at  
24 the end of this pandemic, but we are not totally at the end.  
25 People are still suffering and dying and we have an

## Proceedings

4

1 administrative order that permits that because of the these  
2 extraordinary circumstances to take, among other things,  
3 guilty pleas, by video and sometimes audio without rather than  
4 all of us being physically at the same location.

5 Mr. Villanueva told me about your filings. You have  
6 all consented to this procedure. We established that orally  
7 on the record as we began.

8 So is my understanding correct, Mr. Fels, Mr. Kohut  
9 has no objection to proceeding by way of this video conference  
10 this morning?

11 MR. FELS: Yes, Your Honor. He has no objection. I  
12 explained to him his rights in this record and he knowingly  
13 and voluntarily waives it.

14 THE COURT: And, Mr. Bini, is the same true for the  
15 Government?

16 MR. BINI: Yes, Your Honor. The Government consents  
17 and notes the basketball team that represents the Government  
18 includes me here in Brooklyn, but the rest of my partners are  
19 out of state. And, in addition, defense counsel for  
20 Mr. Kohut, while Mr. Kohut is in Long Island, his defense  
21 counsel is in Florida. So, due to the continuing obligations  
22 related to travel and entry to the courthouse, we certainly  
23 appreciate the Court permitting us to hold this plea by video.

24 THE COURT: I affirm all of that, and I believe in  
25 the interest of justice, to continue to move what has been a

## Proceedings

5

1 complicated case, to continue to move it along and that  
2 includes this particular phase of it involving Mr. Kohut.

3 So with all of those niceties that are so important  
4 to our system and in trying to reserve a sense of normalcy as  
5 we go forward, to these many months, we find that it is in the  
6 interest of justice to proceed this morning.

7 What we are proceeding to, as I understand it  
8 Mr. Fels is that Mr. Kohut will be entering a plea of guilty  
9 to an Information; is that correct?

10 MR. FELS: That is correct, Your Honor.

11 THE COURT: And that being the case, we shall begin  
12 with Mr. Villanueva swearing Mr. Kohut.

13 THE COURTROOM DEPUTY: Mr. Kohut raise your right  
14 hand: Do you solemnly swear or affirm that the testimony you  
15 are about to give will be the truth, the whole truth and  
16 nothing but the truth, so help you God?

17 THE DEFENDANT: I do.

18 (Witness sworn/affirmed.)

19 THE COURT: Mr. Kohut, I must ask you a number of  
20 questions before I can accept your guilty plea. These  
21 questions are designed to assure me that you understand the  
22 charge against you, that you understand the consequences of  
23 pleading guilty to that charge, that you understand the rights  
24 that you would be waiving by pleading guilty, that your  
25 decision to waive those rights and plead guilty is not only

## Proceedings

6

1 knowing, but it is also voluntary. And, lastly, you are going  
2 to have to give me, under oath, answers when I ask you  
3 questions facts that show indeed you are guilty of the charge  
4 to which you plead guilty.

5 Therefore, the questions are important, and to the  
6 extent you either do not hear them or do not understand them,  
7 please let me know and I will repeat or rephrase them for you.  
8 Do you understand that?

9 THE DEFENDANT: Thank you, Your Honor. Yes, I do.

10 THE COURT: Now at this stage of a criminal  
11 proceeding, like in all others in the United States, you are  
12 you entitled to be represented by competent counsel. If you  
13 could not afford counsel, counsel would be appointed for you.  
14 On the call of the calendar this morning, Mr. Fels has  
15 indicated to me that he is your lead counsel for this case.  
16 Is Mr. Fels your lead counsel for this case?

17 THE DEFENDANT: Yes. Mr. Fels is lead counsel, Your  
18 Honor, yes.

19 MR. FELS: Yes, Your Honor.

20 THE COURT: And that means that at any point during  
21 this hearing, Mr. Kohut, if you need to speak with him you  
22 will please let me know and you will be permitted to speak to  
23 him without any penalty whatsoever; do you understand that?

24 THE DEFENDANT: Yes, I do, Your Honor. Thank you.

25 THE COURT: All right. Now, you also took an oath

## Proceedings

7

1 to tell the truth. So that means that if you answer any of  
2 the questions put to you at this hearing falsely, regardless  
3 of who might ask the question, then those answers can be used  
4 against you later in a separate prosecution for the crimes of  
5 perjury or for making a false statement. Do you understand  
6 that?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Now, with all of those understandings we  
9 are going to back up to the beginning and I am going to ask  
10 you to place on the record your full name.

11 THE DEFENDANT: Raymond Kohut.

12 THE COURT: And Mr. Kohut, how old are you?

13 THE DEFENDANT: 68.

14 THE COURT: And what is the last grade you completed  
15 in school?

16 THE DEFENDANT: An MBA at Thunderbird in Phoenix,  
17 Arizona. It was in 1988, Your Honor.

18 THE COURT: It was a good year, I think.

19 THE DEFENDANT: I thought it was.

20 THE COURT: It's a while ago, so. Not everybody  
21 around here, I'm sure, can even remember it too much.

22 But let me also ask you, are you currently or have  
23 you recently been under the care of a medical doctor?

24 THE DEFENDANT: I take high blood pressure pills,  
25 and I saw a doctor last week and I'll be seeing a heart doctor

## Proceedings

8

1 in May, and I have a heart examination in two weeks since I  
2 have heart disease in my family.

3 THE COURT: I know you can't tell from the color of  
4 my hair, but welcome to the club. It comes with age and it is  
5 good to keep on top of these things.

6 THE DEFENDANT: Thank you for asking, Your Honor.

7 THE COURT: Well, the reason why we ask these  
8 questions is it's important for the Court to understand what  
9 you might be laboring under because, at the end of the day, I  
10 have to make an assessment whether or not what you tell me by  
11 the time we get to the end of this hearing is that you  
12 actually know and are capable of understanding the waivers  
13 that you make. So it's important to know someone's health.  
14 And, like the next question, which is are you currently or  
15 have you recently been under the care of a psychiatrist?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: In the last 24 hours have you taken any  
18 narcotic drugs?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: In the last 24 hours have you taken  
21 medications of any kind?

22 THE DEFENDANT: Yes, my blood pressure pills.

23 THE COURT: Okay. In the last 24 hours have you  
24 consumed any alcoholic beverages?

25 THE DEFENDANT: No, I have not, Your Honor.



Proceedings

9

1 THE COURT: Have you ever been hospitalized or  
2 treated for any mental illness?

3 THE DEFENDANT: No, I have not, Your Honor.

4 THE COURT: And have you ever been hospitalized or  
5 treated for any addictions to drugs or alcohol?

6 THE DEFENDANT: No, I have not, Your Honor.

7 THE COURT: As you appear today in court by the  
8 video hookup, is your mind clear?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: And you understand what's going on about  
11 you?

12 THE DEFENDANT: Yes.

13 THE COURT: All right. Now, Mr. Fels, have you had  
14 a full and fair opportunity to discuss this case with  
15 Mr. Kohut?

16 MR. FELS: I have, Your Honor.

17 THE COURT: And based on your conversations with  
18 him, do you believe that he understands the nature of these  
19 proceedings?

20 MR. FELS: I do, Your Honor.

21 THE COURT: Do you believe he understands the nature  
22 of the rights that he would be waiving by pleading guilty?

23 MR. FELS: Yes, Your Honor. I have explained to him  
24 his rights and he does understand them, Your Honor.

25 THE COURT: And based on your interactions with him,

Proceedings

10

1 do you believe that Mr. Kohut is competent to enter a plea of  
2 any kind at this time?

3 MR. FEL: Yes, Your Honor, I do. He is competent.

4 THE COURT: And in your interactions with him, have  
5 you discussed the maximum sentence and fine that can be  
6 imposed in this case?

7 MR. FELS: I have, Your Honor.

8 THE COURT: And have you also discussed with him the  
9 operation of the sentencing guidelines in the context of  
10 recent court decisions?

11 MR. FELS: Yes, I have Your Honor.

12 THE COURT: All right. Mr. Kohut, Mr. Fels tells me  
13 he believes that he has had a full and fair opportunity to  
14 discuss your case with you. Do you believe that you have had  
15 a full and fair opportunity to discuss your case with him?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: And are you satisfied with the  
18 representation and advice you have received?

19 THE DEFENDANT: Yes, I am, Your Honor.

20 THE COURT: Now, Mr. Bini, I'm going to ask you to  
21 place on the record the charge or charges to which it is  
22 anticipated that Mr. Kohut will enter a plea of guilty.

23 MR. BINI: Yes, Your Honor.

24 The defendant is charged with a single count of  
25 conspiracy to commit money laundering in violation of Title 18

Proceedings

11

1 U.S. Code, Section 1956-H.

2 THE COURT: And the period of time and venue?

3 MR. BINI: Yes, Your Honor. It's for the time  
4 period from approximately 2012 to August 2020 in the Eastern  
5 District and elsewhere. And in brief, the defendant is  
6 charged with working for a European energy trading company  
7 with subsidiaries in the United States and elsewhere that's  
8 referred to in the Information as "Trading Company."

9 The defendant and others are charged as being part  
10 of a bribery and money laundering conspiracy, to among other  
11 things pay more than \$22 million in bribes to Ecuadorian  
12 government officials and winning business related to the  
13 purchase of oil products from the state-owned and controlled  
14 company in Ecuador call Petroecuador.

15 THE COURT: Now, Mr. Kohut, is that charge or among  
16 the charges that you discussed with Mr. Fels?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: And do you understand that charge?

19 THE DEFENDANT: Yes, I do, Your Honor.

20 THE COURT: Do you have any questions about that  
21 charge?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: And was a copy of that charge presented  
24 to you in writing for you to review?

25 THE DEFENDANT: I believe it was, Your Honor. I

Proceedings

12

1 believe it was, yes.

2 Adam, can you confirm that?

3 MR. FELS: Yes. Yes, it was, Your Honor.

4 THE COURT: It was probably in what's called an  
5 Information?

6 THE DEFENDANT: Yes, that's correct, Your Honor.

7 THE COURT: Okay. Now, I am going to talk to you.  
8 Have you talked to Mr. Fels about an Information or pleading  
9 to an Information?

10 THE DEFENDANT: We have reviewed the document, Your  
11 Honor.

12 THE COURT: Okay. Now, let me tell you something  
13 about why we pause to talk about this. One of these things,  
14 as I said to you earlier, we go over your rights, the rights  
15 that you waive by pleading guilty. One of the rights that you  
16 have is the right to be prosecuted by way of a grand jury  
17 indictment. Felonies ordinarily are -- prosecution will begin  
18 when the grand jury considers evidence and reports a bill of  
19 indictment and that would start the prosecution. It's a  
20 Constitutional right to have the grand jury process.

21 It's also a right that a defendant can waive. The  
22 defendant can waive a grand jury indictment and accept  
23 prosecution by way of a criminal Information that is filed by  
24 the United States attorney.

25 So let's go over what all of that means. A grand

## Proceedings

13

1 jury you may be familiar with is a body of citizens that are  
2 selected in a court proceeding. There can be no more than 23  
3 of them, there must be at least 16 of them, and before an  
4 indictment can be voted, there must be 12 who agree on voting  
5 the true bill of indictment. And what happens? Once a grand  
6 jury is convened, the prosecutor can appear and present  
7 evidence, evidence that would show to the satisfaction of the  
8 grand jury that a crime has been committed and that a  
9 particular person, upon the evidence that they present, is the  
10 person who perpetrated the crime, and if a quorum of 12  
11 believes and finds that way, then the indictment is voted and  
12 the prosecution begins.

13 So today we are laboring under the understanding  
14 that you will be waiving that process and pleading to an  
15 Information, but we also have to consider what would happen if  
16 you changed your mind between now and the next few minutes,  
17 and did not want to proceed by way of Information.

18 Well, at that point the Government has a choice to  
19 make. The Government may present evidence to a grand jury and  
20 then the grand jury would consider that evidence and they may  
21 or may not vote to indict you, but this is what is certain, if  
22 you waive your right to grand jury indictment and proceed by  
23 way of Information, you will be prosecuted just as if the  
24 grand jury had voted an indictment on this charge.

25 Do you understand that?

Proceedings

14

1 THE DEFENDANT: Yes, I do, Your Honor.

2 THE COURT: And you've discussed your options with  
3 Mr. Fels, as I understand you?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Mr. Fels, do you know of any reason why  
6 Mr. Kohut should not accept prosecution by way of Information?

7 MR. FELS: I do not, Your Honor.

8 THE COURT: And Mr. Kohut, what is your decision?  
9 Do you wish to accept prosecution by way of Information and  
10 waive your right to grand jury indictment?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: And I understand, and Mr. Villanueva,  
13 will confirm this for me, that a written waiver is in your  
14 possession?

15 THE COURTROOM DEPUTY: That is correct, Judge. It  
16 is signed by the defendant and defendant's attorney as well.

17 THE COURT: Mr. Kohut, you confirm that you did, in  
18 fact, sign that document?

19 THE DEFENDANT: Yes, I did Your Honor.

20 THE COURT: Mr. Fels, did you sign it or one of your  
21 colleagues sign it?

22 MR. FELS: I signed it, Your Honor.

23 THE COURT: All right. The Court finds that the  
24 waiver has been voluntarily accepted by the defendant and that  
25 he voluntarily accepts with full knowledge prosecution by way

## Proceedings

15

1 of Information.

2           Where do we go from here? Well, we have got some  
3 more rights to discuss. Mr. Kohut, merely because you signed  
4 and waived your rights to grand jury indictment, doesn't mean  
5 that you have to plead guilty to the Information. Nothing  
6 else changes, so what does that mean? Well, that means that  
7 the Government still has an obligation to establish your guilt  
8 beyond a reasonable doubt through evidence that is credible.

9           Now, the prosecutor may not, or perhaps cannot, meet  
10 his burden of proof, and if that were to be the case, then a  
11 jury considering the charges would be obligated to find you  
12 not guilty even if you are guilty. So what does that mean?  
13 Well, that means that even if you are guilty, you still have a  
14 choice. It is up to you to decide what to do, not your lawyer  
15 or anyone else. You may plead guilty, as you apparently wish  
16 to do, or you may plead not guilty and let the Government  
17 through its proof establish your guilt beyond a reasonable  
18 doubt. Do you understand that?

19           THE DEFENDANT: Yes, I do, Your Honor.

20           THE COURT: And if you did plead not guilty, you  
21 would be entitled to a speedy and public trial on the charges  
22 set forth in the information. Do you understand that?

23           THE DEFENDANT: Yes, Your Honor. Yes.

24           THE COURT: But by pleading guilty, you are  
25 relieving the Government of its obligation to establish your

Proceedings

16

1 guilt beyond a reasonable doubt. Do you understand that?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Now, at any trial you would be presumed  
4 innocent. You would not have to prove that you were innocent.  
5 It's the Government's burden to overcome that presumption and  
6 prove your guilt beyond a reasonable doubt. Do you understand  
7 that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Now, at the trial the witnesses for the  
10 Government would have to come into open court, testify in your  
11 presence. Those witnesses could be brought and examined by  
12 your lawyer. Your lawyer could object to evidence being  
13 offered by the Government. Your lawyer could raise defenses  
14 on your behalf and could even call witnesses that you could  
15 compel to testify, even if they did not want to testify. Do  
16 you understand that?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: But by pleading guilty you are giving up  
19 your right to confront the witnesses who testify against you.  
20 You give up your right to raise defenses or offer proof on  
21 your own behalf. Do you understand that?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: At the trial, that proof could include  
24 you taking the stand and by testifying on your own behalf. Do  
25 you understand that?



Proceedings

17

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: But you could not be forced to take the  
3 witness stand. A defendant in a criminal court in the United  
4 States cannot be forced to take the witness stand and say  
5 anything that could be used against him to show that he is  
6 guilty of the crime with which he has been charged. This is  
7 called your right against self-incrimination. Do you  
8 understand that?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Okay. But by pleading guilty, you are  
11 admitting your guilt and you give up your right against  
12 self-incrimination. Do you understand that?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And Mr. Kohut, it actually goes beyond  
15 that, as I indicated at the very top of the hearing. Not only  
16 will you be giving up your right against self-incrimination,  
17 but you will be obliged to tell me facts that, in fact,  
18 incriminate you, that show that you are in fact guilty of the  
19 charge to which you plead guilty. Do you understand that?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Now, if you do offer your plea of guilty  
22 and I accept it, you will be giving up all of the rights I  
23 have just discussed with you. There will be no trial of any  
24 kind. I will simply enter a judgment based on your guilty  
25 plea. Do you understand that?

Proceedings

18

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Now, Mr. Bini, is there Appellate waiver  
3 in this plea deal?

4 MR. BINI: There is, Your Honor. It's set at 240  
5 months.

6 THE COURT: All right. Now, what is this business  
7 of an appellate waiver? It's simply this, Mr. Kohut: If you  
8 were to go to trial and the jury were to find you guilty, then  
9 you could appeal both the conviction and any sentence that I  
10 impose, but by agreeing to a plea agreement that contains an  
11 appellate waiver you will be giving up your right to challenge  
12 or appeal the conviction or all or part of any sentence that I  
13 impose, or to attack the conviction or the sentence later on  
14 in a collateral proceeding. Do you understand that?

15 THE DEFENDANT: Yes, I do, Your Honor.

16 THE COURT: Now, with all of those understandings it  
17 is still your intent to offer a plea of guilty; is that  
18 correct?

19 THE DEFENDANT: That's correct, Your Honor.

20 THE COURT: Then we will proceed on that, and as I  
21 understand it from Mr. Villanueva, there is a signed plea  
22 agreement as well?

23 THE COURTROOM DEPUTY: There is, Your Honor.

24 THE COURT: And I am sure Mr. Villanueva has marked  
25 it and, if not, it will be marked as Court Exhibit 1.

Proceedings

19

1 And, Mr. Kohut, you said you signed it; correct?

2 THE DEFENDANT: Yes.

3 THE COURT: And, Mr. Fels, you've signed it as well?

4 MR. FELS: I have, Your Honor.

5 THE COURT: And Mr. Bini, who signed for the  
6 Government?

7 MR. BINI: I signed it, Your Honor, along with David  
8 C. Pitluck of my office, and Derrick Ettinger signed it.  
9 Another attorney from the section, David M. Fuhr, signed it;  
10 and Ann Brickley signed it along with Mary Butler, also from  
11 the Department of Justice from the MLARS section. Money  
12 laundering and asset recovery section, MLARS.

13 THE COURT: We have a lot of cosigners today.

14 MR. BINI: Yes, we do, Your Honor.

15 THE COURT: Okay. Now, Mr. Kohut, before you signed  
16 that plea agreement, did you discuss it with Mr. Fels?

17 THE DEFENDANT: Yes, we did -- yes, I did, Your  
18 Honor.

19 THE COURT: And did you read it yourself?

20 THE DEFENDANT: Absolutely, yes.

21 THE COURT: And you signed it -- when you signed it,  
22 did you understand it?

23 THE DEFENDANT: Yes, I did, Your Honor.

24 THE COURT: Do you understand it now?

25 THE DEFENDANT: Yes, I do, Your Honor.

Proceedings

20

1 THE COURT: Do you have any questions about it now?

2 THE DEFENDANT: No. No, Your Honor.

3 THE COURT: And this is the only agreement or  
4 understanding that you have with the Government about this  
5 case?

6 THE DEFENDANT: As I understand, yes.

7 THE COURT: Okay. Well, that is what is important.

8 THE DEFENDANT: Yes, it is, Your Honor.

9 THE COURT: Now, Mr. Fels, you reviewed this  
10 thoroughly with Mr. Kohut?

11 MR. FELS: I did, Your Honor.

12 THE COURT: And based on your conversations with  
13 him, as you went over it with him, did you believe he  
14 understood the document?

15 MR. FELS: I do, Your Honor. I do believe he  
16 understood the document.

17 THE COURT: And do you believe when he signed it did  
18 he did so voluntary?

19 MR. FELS: Yes, Your Honor.

20 THE COURT: And to the best of your information and  
21 belief, other than this plea agreement, there is no other  
22 agreement or deal that Mr. Kohut has with the Government about  
23 this case?

24 MR. FELS: That is correct, Your Honor.

25 THE COURT: So let me move on again.

## Proceedings

21

1           Mr. Kohut, similar to what we have done in other  
2 aspects, I know that you and Mr. Fels have already done this  
3 privately, but it's important to go over the highlights of the  
4 potential consequences of your plea in public, on the record,  
5 to assure me and perhaps other judges reading the record later  
6 that your decision to enter into the agreement was knowing and  
7 voluntary. What we want to do now is go over what we call the  
8 possible consequences of the plea, and with Mr. Bini's  
9 assistance, we will do just that. The first area of inquiry  
10 is the possibility of imprisonment.

11           And what's the minimum and maximum on this charge?

12           MR. BINI: Your Honor, there is a minimum penalty of  
13 zero years imprisonment, so no minimum penalty, but there is a  
14 maximum term of imprisonment of 20 years in prison.

15           THE COURT: All right. So that translates to the  
16 sentence will be somewhere between zero and 240 months; is  
17 that correct?

18           MR. BINI: Yes, Your Honor.

19           THE COURT: And do you understand that to be the  
20 case, Mr. Kohut?

21           THE DEFENDANT: Yes, I do, Your Honor.

22           THE COURT: All right. Now there is also, one of  
23 the other potential consequences is what's known as supervised  
24 release. Supervised release refers to that period of time  
25 following any period of imprisonment. A defendant who has

## Proceedings

22

1 been imprisoned who will be released from jail on supervised  
2 release with certain terms and conditions of release, and if  
3 during a period of supervised release that defendant were to  
4 violate one of the terms and conditions, well, then that  
5 defendant could be sentenced back to prison for additional  
6 jail time. Do you understand that?

7 THE DEFENDANT: I do, Your Honor.

8 THE COURT: Mr. Bini, is this the standard zero to  
9 three on supervised release?

10 MR. BINI: That's correct, Your Honor.

11 THE COURT: So in this particular case, Mr. Kohut,  
12 the sections of law that apply sets the minimum term at zero  
13 and the maximum term of supervised release as three years. So  
14 the Court will impose a period of supervision of zero to three  
15 years and if during that term you were to violate one of the  
16 terms of the conditions of release, you could be sent back to  
17 prison for two additional years without credit for any time  
18 previously served in prison or time previously served on  
19 supervised release. Do you understand that?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Now, it's about to get more complicated  
22 at this point when we ask about the provision that deals with  
23 fines. How does it read, Mr. Bini?

24 MR. BINI: Yes, Your Honor. The greater of \$500,000  
25 or twice the value of the monetary instruments or funds

## Proceedings

23

1 involved in the transactions and in this particular case, Your  
2 Honor, that second part of the maximum may apply and there was  
3 more than \$22 million in bribes that were paid to officials as  
4 part of the money laundering conspiracy. And so the  
5 Government thinks that that fine amount to be twice that.

6 THE COURT: Which would be 44 million?

7 MR. BINI: Yes, Your Honor.

8 THE COURT: Okay. That's the potential. Whether or  
9 not that would be Constitutional, that would be an issue that  
10 I am sure we would hear Mr. Fels speak to at an appropriate  
11 time. But as far as issues to confront, Mr. Kohut, that would  
12 be the potential consequence. Do you understand that?

13 THE DEFENDANT: Yes, I do, Your Honor.

14 THE COURT: Mr. Bini told me prior to the hearing  
15 that I believe there is some further understanding on the  
16 issue of forfeiture; is that correct?

17 MR. BINI: Yes. The defendant has agreed to  
18 criminal forfeiture in the amount of \$2,200,000 as set forth  
19 in his agreement with the Government.

20 THE COURT: And there's some timing on this as well  
21 as I understand it?

22 MR. BINI: That's correct, Your Honor. The  
23 defendant is required to pay \$1 million within 30 days of his  
24 guilty plea and the balance of the forfeiture funds are due at  
25 the time of sentencing, Your Honor.

Proceedings

24

1 THE COURT: Mr. Kohut, is that your understanding as  
2 well?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: And you did voluntarily agree to that?

5 THE DEFENDANT: Yes, I did, Your Honor.

6 THE COURT: All right. Besides the fine and  
7 forfeiture, there is also, I presume, a mandatory restitution  
8 requirement?

9 MR. BINI: Your Honor, there is an agreement and the  
10 defendant was placed on notice by the Government that he would  
11 owe restitution if that is determined by the Court as  
12 applicable here. Based upon the Government's knowledge of the  
13 case thus far, we do not know of any restitution obligations  
14 thus far. However, if some victim came forward and it was  
15 found to be a victim or the party turned out to be a victim,  
16 it is possible.

17 THE COURT: So you understand that that's an open  
18 question, Mr. Kohut, that we really can't answer today, but  
19 there was an open-ended restitution obligation?

20 THE DEFENDANT: I understand, Your Honor.

21 THE COURT: All right. And there is also a special  
22 statutory assessment that the Court must impose of not less  
23 than \$100. Do you understand that?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Now, are you a citizen of the United



Proceedings

25

1 States, Mr. Kohut?

2 THE DEFENDANT: No, I am not, Your Honor.

3 THE COURT: So as a result of your plea, you could  
4 be deported to -- excluded, deported or removed from the  
5 United States. Do you understand that?

6 THE DEFENDANT: Yes, I do, Your Honor.

7 THE COURT: Mr. Bini, have I overlooked any other  
8 potential consequences?

9 MR. BINI: No, Your Honor. You have touched on all  
10 of the consequences that are set out in the parties'  
11 agreement.

12 THE COURT: And I just want to -- I call it the  
13 potential consequences but they are somewhat open-ended. The  
14 one thing that is not open-ended, Mr. Kohut, is simply this:  
15 That Appellate waiver is part of the deal and essentially  
16 because the waiver is set at the maximum, that effectively you  
17 are giving up your right to appeal your conviction and  
18 sentence. Do you understand that?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And you are also giving up your right to  
21 challenge it in a collateral proceeding later. Do you  
22 understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Okay. What comes next is the process of  
25 sentencing itself and I want to go over that with you. That

1 begins with the work of the United States Probation Office.  
2 The Probation Department will begin a separate investigation  
3 into the charges and a separate investigation into your life,  
4 whether your business, your health, your education, whether  
5 you have a prior criminal record and every other aspect of  
6 your life, and make a report to you and Mr. Fels and to  
7 Mr. Bini and to me, what they find in their pre-sentence  
8 investigation.

9 Also included in that report will be the Probation  
10 Department calculation of what the sentencing guidelines show.  
11 And the sentencing guidelines are promulgated, the guidelines  
12 are promulgated by the United States Sentencing Commission.  
13 They pinpoint a specific sentence for any given crime. They  
14 refer to factors that lead the Court to depart or vary from  
15 that point, either upwardly or downwardly.

16 Now, these guidelines are no longer mandatory, but  
17 they do remain advisory so that in determining what your  
18 sentence will be, the Court will take, as is required, advice  
19 from the guidelines. Do you understand that?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Now, as I say, Probation will begin its  
22 work and work its way to that computation among its other  
23 findings and no one can predict with precision what the  
24 Probation Department will find and certainly not even I can  
25 predict what I will do with that recommendation at the time of

1 sentence, but we can predict this: It will be in the report  
2 that is sent to you and to Mr. Fels and to the Government.  
3 After everyone has had an opportunity to digest that violation  
4 report we will schedule a date for another hearing. God  
5 willing, we should be all physically present in the same room,  
6 I would pray, but as they say, if you want to make God smile,  
7 tell him you have a plan. So wherever it is that we gather,  
8 when we gather, then the process will be the same. And that  
9 process will begin with the lawyers making their argument to  
10 me as to what the Sentencing Guideline should be, and I will  
11 make a determination as to what the guidelines are in this  
12 case.

13           Having done that, we will then proceed to the  
14 sentencing process itself, which is controlled by another  
15 section of law, Title 18 U.S. Code section 3553(a), which sets  
16 forth the objectives, standards and goals for a court to  
17 achieve its sentencing of a defendant. Nothing too  
18 earth-shattering. It's probably the kinds of things that an  
19 average citizen would expect the Court to do.

20           One of the objectives, of course, is to assess what  
21 the crime is and the more serious the crime then the  
22 guidelines say, the 3553(a) is essentially the more serious  
23 the punishment and that there ought to be an aspect of  
24 punishment in sentencing, imposing something that hurts and in  
25 the modern era that something is usually the taking of time

1 when someone is put in a custodial situation and that's what  
2 works.

3 This also works into another obligation imposed on  
4 the Court which is to impose a sentence that promotes respect  
5 for the law. Congress passes these laws and attaches  
6 penalties to them so if the Courts weren't imposing those  
7 penalties, there weren't be much respect for the law. So that  
8 remains a concern. That also dives into the concept that it  
9 should hurt, that punishment should hurt enough so that it  
10 teaches the defendant not to do it again. I refer to that as  
11 the hot stove aspect.

12 There's also an aspect of general deterrence. If  
13 someone is punished as an example, it says to the public at  
14 large basically don't do what this defendant did because the  
15 punishment that's been visited on him will ultimately be  
16 visited on you. So there is an aspect of general deterrence.

17 There is also a concern at times for incapacitation;  
18 that a defendant may be so dangerous to the community, to  
19 society sat large they have to be put away and kept away from  
20 society. And there is also a concern for rehabilitation for  
21 the most part. Not in every sentencing, but for the most part  
22 people who are sent to jail come out of jail and so there is a  
23 concern for reentry; that a defendant is going to reenter  
24 society and that he or she has the ability to more likely  
25 succeed legally on reentry.

1           And there is also instructions that treat individual  
2 characteristics of the defendant and in a way it should read  
3 on a sentence. And there is also a command that after the  
4 court were to balance all of these factors that the Court  
5 impose a sentence that is no harsher than necessary to achieve  
6 the sentencing objectives. Do you understand the process of  
7 sentence?

8           THE DEFENDANT: Yes, Your Honor.

9           THE COURT: All right. Now, as I indicated to you,  
10 no one can predict with precision what the Sentencing  
11 Guidelines are going to recommend in this case. The lawyers  
12 can look at the facts and make an assessment or guess as to  
13 what the guidelines are likely to be.

14           Mr. Bini, has the Government made any assessment of  
15 what the guidelines are likely to be in this case?

16           MR. BINI: Yes, Your Honor. The Government  
17 calculates the total offense level at a 42, minus the three  
18 points for acceptance of responsibility at a 39, which would  
19 recommend a guideline sentence of 262 to 327 months. Here,  
20 because the single count is a 20 year statutory maximum, the  
21 recommendation would be 240 months.

22           The reason for the Government's calculation is we  
23 looked first to 2S1.1A1 for money laundering and then to the  
24 offenses that were involved, the SUAs in this money laundering  
25 conspiracy, violations of the Foreign Corrupt Practices Act

## Proceedings

30

1 and the bribery laws of Ecuador.

2           So from 2(s)1.1 we looked to 2C1.1(a), which  
3 establishes a base offense level of 12. There is an  
4 enhancement for more than \$9.5 million in bribes of 20 points.  
5 There's an enhancement for more than one bribe of two points.  
6 There is an enhancement the Government calculates of four  
7 points for involvement of a high-level public official in the  
8 country of Ecuador. There's an enhancement now back under the  
9 money laundering guideline 2S1.1(a)(b) for a conviction under  
10 Title 18 U.S. Code section 1956. That's a two-point  
11 enhancement and then the Government calculates a two-point  
12 enhancement for sophisticated money laundering.

13           THE COURT: Okay.

14           MR. FELS: Your Honor, would you mind if we just had  
15 a slight break so I could speak with my client for just a  
16 moment?

17           THE COURT: Absolutely.

18           MR. FELS: We will be back in just a few minutes.

19           THE COURT: We will recess.

20           (Pause in proceedings.)

21           THE COURT: Mr. Fels, have you had a chance to  
22 confer with Mr. Kohut?

23           MR. FELS: Yes, Your Honor.

24           THE COURT: And we are ready to proceed?

25           MR. FELS: We are Your Honor.

## Proceedings

31

1 THE COURT: I believe where we broke off, I was  
2 going to ask you if you made any computation as to what the  
3 guidelines would show.

4 MR. FELS: Your Honor, we're going to obviously  
5 preserve our objections to some of the guidelines that the  
6 Government believes, but that's at a later point.

7 THE COURT: Mr. Kohut, I was asking counsel about  
8 this just so that you have advice, that you have in mind. The  
9 fact of the matter is that if all of their computations were  
10 to prove erroneous, it wouldn't matter. It wouldn't give you  
11 the right to withdraw later the plea that you would enter now.  
12 Do you understand that?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Now, we sort of actually -- you have  
15 actually done one of the things I was going to ask if you  
16 wanted to do. Again, I want to ask if there's anything, any  
17 questions that you have, anything that was done at the  
18 hearing, you can ask them on the record. I will try to answer  
19 them on the record. The court reporter will take them down.  
20 If you need to speak further with Mr. Fels and other counsel,  
21 I would give you time for that, but if you don't need time for  
22 either of those two things, then I will simply move to take  
23 your plea. Do you need additional time or are you ready to  
24 plead now?

25 THE DEFENDANT: I am ready now, Your Honor.

Proceedings

32

1 THE COURT: Mr. Fels, do you know of any reason why  
2 Mr. Kohut should not plead guilty at this time?

3 MR. FELS: I do not Your Honor.

4 THE COURT: Are you aware of any viable legal  
5 defense to the charge?

6 MR. FELS: Your Honor, we have talked about legal  
7 defenses, we have gone over them -- I have gone over them with  
8 Mr. Kohut and we have discussed our various strategies and we  
9 have agreed and the client, Mr. Kohut, has agreed that this is  
10 the appropriate posture taken and he is ready and willing to  
11 plead guilty to the Information, Your Honor.

12 THE COURT: All right. Then we will turn to that.

13 Mr. Kohut, with respect to the one count in the  
14 Information what is your plea, guilty or not guilty?

15 THE DEFENDANT: Guilty, Your Honor.

16 THE COURT: Mr. Kohut, are you pleading guilty  
17 freely and voluntarily of your own free will?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Has anyone forced you or threatened you  
20 to plead guilty?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: Has anyone promised you anything to  
23 induce you to plead guilty other than the promises that are  
24 set forth in the plea agreement that was marked as Court  
25 Exhibit 1?



Proceedings

33

1 THE DEFENDANT: No, Your Honor.

2 THE COURT: Has anyone made any promises to you as  
3 to what your final sentence will be?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: Now, you may recall a couple of times  
6 throughout the hearing I mentioned that there would come a  
7 point when either in answers to questions or the reading of a  
8 narrative, you would have to tell me facts under oath that  
9 show that you are guilty to the charge to which you have plead  
10 guilty. We have now reached that point.

11 Mr. Fels, I don't know if you have arranged for  
12 question and answer, but now is the time for allocution.

13 MR. FELS: Mr. Kohut does have a statement that he  
14 can read for the record.

15 THE COURT: That is fine.

16 Mr. Kohut, please proceed.

17 THE DEFENDANT: So, Your Honor, from approximately  
18 2012 to August 2020, I worked in the Bahamas for a trading  
19 company handling business development as an employee and  
20 independent contractor. Beginning around 2012 and continuing  
21 to about August 2020, I agreed to participate in a scheme with  
22 Consultant 1 and 2 and two of my supervisors in the trading  
23 company, trading company employees No. 1 and No. 2, to pay  
24 bribes to foreign officials in Ecuador through Consultant No.  
25 1 and No. 2, to assist trading company in winning business

## Proceedings

34

1 related to the purchase of oil products from Ecuador state  
2 owned and controlled oil company, Petroecuador.

3 I facilitated, promoted and concealed a bribery  
4 scheme. I assisted in engaging Consultant No. 1 and No. 2  
5 through consulting agreements that did not include the true  
6 purpose of their engagements. I also received the invoices  
7 from the consultants, verified the payment amounts and sent  
8 invoices along the approval chain at trading company,  
9 facilitating the payment to Consultant No. 1 and No. 2 of many  
10 millions of dollars knowing that the consultants would use a  
11 portion of the money to bribe Ecuadorian officials on behalf  
12 of the trading company.

13 Some of the transactions moved from bank overseas  
14 including Singapore through the United States including  
15 through the Eastern District of New York and to the  
16 consultants' accounts outside the United States. I had  
17 several meetings in the United States in furtherance of the  
18 bribery scheme including one of my supervisor's trading  
19 company and the consultants to discuss certain of the  
20 contracts to which bribes will be paid and to meeting with a  
21 Petroecuador official, Ecuador Official No. 1, knowing that he  
22 would be receiving bribes as part of the scheme. I knew what  
23 I was doing was wrong and illegal.

24 End of statement, Your Honor.

25 THE COURT: Mr. Bini, did we catch all of the

## Proceedings

35

1 elements?

2 MR. BINI: Yes, Your Honor, the Government believes  
3 that that satisfies all of the elements including venue.

4 THE COURT: That being the case, the Court is  
5 satisfied as well. Mr. Kohut, the Court finds based on your  
6 allocution and your statement under oath today; that you  
7 understand the charge against you; that you understand the  
8 consequences of pleading guilty to that charge; that you  
9 understand your rights; that you understand the rights that  
10 you waive by pleading guilty; that your decision to waive  
11 those rights is not only knowing and voluntary; and that  
12 finally that you have provided in your allocutions under oath  
13 the facts that show that you are guilty of the charge to which  
14 you have pleaded guilty.

15 Therefore, I accept your plea of guilt to the one  
16 count of the Information. I won't set a sentencing date at  
17 this time, Mr. Kohut, but after Probation has completed the  
18 work that we've discussed on the record and counsel has had a  
19 chance to review the report, we will set a sentencing date.

20 I assume, Mr. Fels, whenever Probation reaches out  
21 to Mr. Kohut, you wish to be notified and to be present in  
22 some way?

23 MR. FELS: I do, Your Honor.

24 THE COURT: And the record will record that.

25 Is there anything else we need to address?

Proceedings

36

1 MR. BINI: Not for the Government. Thank you, Your  
2 Honor.

3 THE COURT: How about for you, Mr. Fels; is there  
4 anything we need to address from the defense?

5 MR. FELS: No, Your Honor.

6 THE COURT: That being the case, good luck to you  
7 Mr. Kohut?

8 THE DEFENDANT: Thank you.

9 THE COURT: You are welcome. We will reconvene  
10 somehow and some way. With the help of the Lord hopefully we  
11 will get the pandemic over. Have a good day, everyone.

12 MR. BINI: Thank you, Your Honor.

13 MR. FELS: Thank you.

14

15 (Matter adjourned.)

16 - oo0oo -

17

18

19

20

21

22

23

24

25